



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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February 13, 2015

Mr. George Schulz  
Center for Investigative Reporting  
3816 S. Lamar Blvd. #506  
Austin, TX 78704

*Re: Formal Complaint 15-FC-07; Alleged Violation of the Access to Public Records Act by the Indiana State Police*

Dear Mr. Schulz,

This advisory opinion is in response to your formal complaint alleging the Indiana State Police ("ISP"), violated the Access to Public Records Act ("APRA") Ind. Code § 5-14-3-1 *et. seq.* ISP has responded to your complaint via Lt. Susan Dean, Esq. Her response is enclosed for your review. I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 8, 2015.

## **BACKGROUND**

Your complaint dated January 8, 2015 alleges ISP violated the Access to Public Records Act by failing to produce information you requested.

On or about November 21, 2014, you submitted a public records request to ISP seeking information on a suspected serial killer case from the 1980s for a story on unidentified decedents. Two unidentified victims were found in an investigation in 1983. You are seeking any and all documents about the two individuals in question.

ISP responded on November 26, 2014 and denied the records due to the requested records being investigatory in nature. ISP is choosing to exercise their discretion in withholding records related to those individuals. You take exception to this denial due to the fact the criminal case saw final adjudication and disposition in 1991.

In its response to your formal complaint, ISP argues the case remains open despite its age. The suspected murderer was never tried for the killing of the two unidentified victims and ISP suggests the files contain information known only to the killer and any

accomplish. Therefore, the release of the documentation you seek may compromise any further investigation into the circumstances.

## **DISCUSSION**

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Indiana State Police is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy ISP’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

Indiana Code § 5-14-3-4(b)(1) provides that a law enforcement agency has discretion over the disclosure of investigatory records. The information you request falls under the category of investigatory records as it was compiled in the course of an investigation of a crime.

You are correct that the APRA favors disclosure and the burden of proof for nondisclosure is on the agency. Moreover, a trial court will weigh the evidence to determine whether non-disclosure is arbitrary and capricious. See Ind. Code § 5-14-3-9(g)(2). I have often cautioned law enforcement agencies to be judicious when exercising the investigatory exception -especially when the information request involves closed or aged cases.

After you approached my office with your concern, I met with ISP to discuss the matter. Although I do not always agree with their assessments, I know ISP to act in good faith in these matters. In this situation, as the subject matter experts, ISP is in the best position to determine what information could compromise one of their investigations. I defer to their conclusion that some of the information you seek could potentially frustrate any leads in the future.

The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. See Ind. Code § 5-14-3-6(a). The above discussion notwithstanding, I would request ISP look into the case file to determine if there is any documentation that would not compromise the investigation which then could be released to you to help you in obtaining some of the information you seek.

## **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor the Indiana State Police has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Lt. Susan Dean, Esq.